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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-6521

MONICA ALDINGER,

Petitioner,

v.

MERTON HOWARD, individually and in his capacity as Treasurer of Spokane County, and
SPOKANE COUNTY, a public corporation,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

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ARGUMENT

I.

THE DOCTRINE OF PENDENT JURISDICTION IS CONSTITUTIONALLY SOUND.

The issue before this Court, set forth more fully in the petitioner's opening brief, is properly narrowed to the power of the Court to join pendent parties. The

Respondent, misconstruing the issue, contends that the doctrine of pendent jurisdiction itself is unconstitutional. This conclusion relegates to obscurity the substantial judicial history of the doctrine, which has consistently reflected the court's reliance upon pendent jurisdiction as a necessary tool for the exercise of its proper function.

Respondent suggests that the federalist papers support his contention. This document does not and cannot speak with authority. This series of letters, representing efforts by Alexander Hamilton, James Madison, and John Jay to "sell" the U.S. Constitution to the ratifying convention of New York, merely reflects the opinions of the authors at a time when fear of joining a union with a strong central government was widespread. These letters were written in a political climate in response to a specific need and political purpose.

The Constitution itself however, does not support the respondent's contention. It has been held repeatedly by this Court and others that the Constitution allows the federal courts the power to exercise pendent jurisdiction over related non-federal claims. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966). The Constitution, Article III, Section 2 states that "(the) judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States. . . ." As Chief Justice Marshall held as early as 1824, the above grant of federal jurisdiction contemplates and authorizes the adjudication of any non-federal issues necessary to the resolution of the federal claim. *Osborne v. Bank of United States*, 22 U.S. (9 Wheat.) 738, 6 L.Ed. 204 (1824). To hold otherwise would severly restrict the

ability of the federal courts to entertain many cases. Extended to the extreme proposed by the respondent, most multiple claim cases, both with and without multiple parties, would be either absurdly fragmented or duplicated within the state court system because few complex cases involve purely federal or constitutional issues.

Marshall's characterization of "case" as encompassing every question necessary to provide complete relief has never been rejected. This sound judicial principle has been refined by the collective wisdom and consideration of the federal courts for over 150 years.

II.

THE INCLUSION OF PENDENT PARTIES WOULD NOT "OPEN THE FLOOD GATES".

Respondent suggests that the federal courts would be deluged with state claims as a result of the doctrine of pendent jurisdiction. To the contrary, courts have frequently cited the *promotion* of judicial economy as a basis for invoking pendent jurisdiction. See e.g. *Hatridge v. Aetna Casualty & Surety Co.*, 415 F.2d 809 (8th Cir. 1969). Courts have had little trouble finding that judicial economy is preserved when all of the claims of all parties involved are included in one legal proceeding.

The question that a trial court must give serious attention to is whether it is possible and appropriate to resolve all of the claims in one trial rather than two or more. Cases often involve more than one claim and frequently more than two parties. Under the recognized

principles of pendent jurisdiction, it is necessarily within the discretion of the trial court to determine if all of the issues presented are appropriately resolved in one judicial proceeding.

The cases cited in petitioner's opening brief indicate that the doctrine of pendent jurisdiction has been sparingly applied. Judicial discretion appears to have served as an excellent check upon the wholesale infusion of state claims into the Federal Court system. See e.g. *Patrum v. City of Greensburg, Kentucky*, 419 F.2d 1300 (6th Cir. 1969). Accordingly, denying the trial court the power to join pendent claims and parties would remove an important aspect of discretion and would increase the burden upon the judicial system without appreciably decreasing the number of cases filed in the Federal Courts. The application of the doctrine of pendent jurisdiction does not result in additional cases being filed in the Federal Court system because, for the doctrine of pendent jurisdiction to be available, there must already be an existing and substantial federal claim.

III.

THE DOCTRINE OF PENDENT JURISDICTION DOES NOT AND WILL NOT CAUSE UNFAIRNESS OR INCONVENIENCE TO LITIGANTS.

Respondent suggests that forcing a litigant into Federal Court is unfair to that litigant. Again, that the doctrine of pendent jurisdiction is a discretionary doctrine destroys the validity of this contention. There is no reason to doubt that the exercise of sound judicial

discretion by the District Court would not be an effective mechanism to prevent abuse and insure fairness to litigants. Indeed, discretion is the keystone of the effective functioning of the judicial system as we know it. See 4, Wright and Miller, FEDERAL PRACTICE AND PROCEDURE, § 1029, p. 129 (1969).

Respondent's fears are misconceived. Pendent jurisdiction, and it's close relative ancillary jurisdiction, involve a federal court's power to invoke subject matter jurisdiction. It does not concern the jurisdiction the Court may have over the parties involved which may be secured by proper service of process upon an individual who has certain minimum contacts with the forum state or district. *See Block Industries v. DHJ Industries, Inc.*, 495 F.2d 256 (1974).

Where personal jurisdiction over a party has been or can be obtained, the salient question to be asked is whether the Court has subject matter jurisdiction over the claims involved. The doctrine of pendent jurisdiction has long been recognized as a legitimate basis for exercising subject matter jurisdiction over related but otherwise non-federal claims. See *United Mine Workers v. Gibbs*, supra. The joinder of a pendent party would not require an expansion of subject matter jurisdiction beyond that already permitted. The incidental inclusion of an appropriately related non-federal party has not been considered a bar to this common sense approach. As Wright states:

> If the ancillary and pendent jurisdiction doctrines are sound, there seems to be little justification for not extending their application to cases involving joinder of parties under Rule 20, provided, of course, that the test established by the Supreme Court in *United Mine Workers of America v. Gibbs*, (Footnote ommitted) as well as the

requirements of Rule 20(a) have been met. The same notions of judicial economy, trial convenience and fairness to litigants that allow the application of pendent and ancillary jurisdiction when joining claims by or against a single party seem to be equally applicable when the court is dealing with multiple parties. Concern that substantial individual issues, such as damages, might consume the court's energy or allow state claims to "ride on the coat tail" of the jurisdictionally sufficient claim overlooks the screening function served by the Gibbs test and the restraint exercised by federal courts. 7, Wright and Miller, FEDERAL PRACTICE AND PROCEDURE § 1659, P. 315 (1972).

Respondent further suggests that pendent jurisdiction is being used as a device to extend the allowable scope of an action filed pursuant to 42 U.S.C. 1983. That this is absurd is demonstrated by the wide diversity of cases set forth in the petitioner's opening brief. Pendent jurisdiction, specifically the addition of pendent parties, has been accomplished in a wide variety of cases and is not specific to any one basis of federal jurisdiction. Pendent jurisdiction is a doctrine that cuts across jurisdictional lines and is quite universal in its application. The Court need merely inquire as to the relative advantages versus the disadvantages of hearing all related claims against all involved parties in one rather than two judicial proceedings. The original basis of the jurisdiction-granting claim is immaterial to this determination.

IV.

THE PETITIONER HAS STATED A CLAIM AGAINST THE "PENDENT PARTY".

As a collateral matter, the respondent contends that the petitioner has failed to state a claim against the defendant Spokane County over which the district court may assert pendent jurisdiction. This contention is immaterial as well as invalid. Because of the liberal pleading standards of the Federal Rules of Civil Procedure and of the Washington Court Rules, such a contention is totally without merit.

Petitioner, in her second amended complaint, alleged that she had been damaged by the individual defendant and then set forth an agency relationship between that defendant and the county defendant. (App. 13-14) The complaint, admittedly not impeccably plead, contains sufficient information to inform the county defendant of the nature of the cause of action against it and to enable it to respond. This is sufficient under Rule 8, Fed. R. Civ. P., as well as under CR 8 of the Washington Court Rules. In fact, the complaint sets forth all of the elements of a claim of vicarious liability against the defendant County under Washington law.

The essence of Rule 8, and the various rules dealing with the form and substance of pleading, is that pleadings must provide "fair notice" of what the plaintiff's claim is and the grounds upon which it rests. *Conley v. Gibson*, 355 U.S. 41, 48 (1957). Considerable leeway is permitted as long as the defendant is given fair notice. As *Conley* held, a complaint should not be dismissed unless it appears beyond doubt that the plaintiff is not entitled to relief under any state of facts which could be proved in support of the claim.

In addition, Rules 15(a) and (b) permit a party to amend his pleadings by leave of the court, such leave to be "freely given when justice so requires". Leave may be granted at any time, even after judgment. Leave is typically granted in response to a motion to dismiss pursuant to FRCP 12(b)(6) or CR 12(b)(6), and must be given even though the Court doubts that the defect can be cured. See *Cross v. Byrum*, 348 F. Supp. 196 (S.D. Fla. 1972).

Finally, FRCP 54(c) and CR 54(c) permit the Court to grant, by final judgment, the relief to which the party is entitled even if such relief has not been demanded in his pleadings.

The clear intent of the Federal Rules as well as the Washington Court Rules militates against dismissal of actions when the pleadings provide fair notice to the defendant. This is especially so when the pleadings can be clarified by simple amendment. Accordingly, there exists a state claim over which the district court may exert pendent jurisdiction.

Respondent apparently raises this issue for the purpose of avoiding a decision. Certiorari was granted in this cause to resolve a serious conflict between several courts of appeals about an important issue of federal jurisdiction. It was not granted to handle a routine question of the sufficiency of the pleadings that is within the purview of the trial court to resolve.

CONCLUSION

The question of "pendent parties" was recently addressed by the First Circuit Court of Appeals. For an enlightening view of the dilemma presented to a trial

court faced with a complex case with multiple claims and parties, See *Bowers v. Moreno*, 520 F.2d 843, 846 (1st Cir. 1975). It is interesting to find at the conclusion of that court's analysis, the statment "... this case is one where, if there had not existed a doctrine allowing federal jurisdiction over "pendent parties", it would have had to be invented."

For the foregoing reasons, it is respectfully submitted that the judgment of the Court below should be reversed.

Respectfully submitted,

NORMAN ROSENBERG

Counsel for Petitioner